

**135 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-31287-2023

Date of decision : 03.07.2023

Sham Sunder Chadha

...Petitioner

Vs.

**State of U.T.Chandigarh
and another**

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. G.S.Sandhu, Advocate and
Mr. Sukhvinder Singh, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, Addl.P.P. U.T.Chandigarh.

MANOJ BAJAJ, J.

Petitioner/accused has filed this petition under Section 482 Code of Criminal Procedure seeking quashing of the criminal complaint bearing No.12975 dated 29.07.2019 under Section 138 Negotiable Instruments Act, 1881, summoning order dated 30.08.2019 (Annexure P-3) as well as the order dated 20.04.2023 (Annexure P-1), whereby the Additional Sessions Judge, Chandigarh while dismissing the petitioner's revision petition upheld the summoning order dated 30.08.2019.

Learned counsel has argued that the respondent No.2, namely, Ajay Kumar brought a complaint under 138 Negotiable Instruments Act, 1881 on the ground that in January, 2018 he had advanced a friendly loan of Rs.22 lacs in cash to the petitioner and against it a receipt and affidavit was executed by the accused, and in order to discharge the said liability, two cheques bearing No.000092 dated 08.04.2019 amounting to Rs.7 lacs and 000094 dated 28.05.2019 amounting to Rs.15 lacs were issued by him, however, upon

presentation, the same were dishonoured as the payment was stopped by the drawer. Learned counsel has argued that considering the complaint and pre-summoning evidence, trial Court summoned the petitioner as an accused and being aggrieved against his summoning, the petitioner preferred revision petition, but, the same was also dismissed through impugned order dated 20.04.2023 (Annexure P-1).

Learned counsel has drawn the attention of the Court to Annexure P-6 to contend that on the basis of information given by the petitioner that his few cheques, stamp papers along with 5-6 blank signed papers, attested photocopies of Aadhar Card, senior citizen card and driving license were stolen, whereupon a DDR dated 06.12.2018 was entered at Police Station Sector 17, Chandigarh. According to him, the petitioner simultaneously gave intimation dated 06.12.2018 (Annexure P-5) to the Bank as well for stopping the payment of stolen cheques. Learned counsel has further argued that after service of summons of the criminal complaint in September 2019, he came to learn that the cheques were misused by his acquaintance, namely, Ajay Kumar, therefore, he made another complaint to the Police against him on 17.12.2019. He submits that in all these facts and circumstances, it is evident that the impugned complaint and summoning order passed by Judicial Magistrate First Class, Chandigarh is nothing, but misuse of judicial process, therefore, the impugned complaint and summoning order deserve to be quashed, as the revisional Court has also not exercised its jurisdiction properly.

Upon hearing learned counsel and considering his submissions, this Court finds that the impugned complaint filed by complainant-Ajay Kumar contains averments relating to the commission of alleged offence punishable

under Section 138 Negotiable Instruments Act, 1881 and further considering the pre-summoning evidence including receipt (Ex.C-1) and affidavit (Ex.C-2), Judicial Magistrate First Class issued process against the accused. By now it is well settled law that at this stage, the Magistrate is only to record satisfaction that the averments in the complaint and pre-summoning evidence *prima facie* disclose commission of alleged offence by the accused. A perusal of the summoning order dated 30.08.2019 shows that the Magistrate has carefully examined the material on record before issuing the process against accused, therefore, the said order has been rightly upheld by the Additional Sessions Judge while dismissing the petitioner's revision petition. The impugned orders do not suffer from any illegality and impropriety.

Now while examining the stand of the petitioner that the subject cheques were stolen is only a defence set up by him against the impugned complaint, but this stand alone is not sufficient for exercise of inherent powers under Section 482 Cr.P.C, because at this stage, the grounds raised and documents relied upon by the petitioner cannot be accepted as truthful for quashing of the complaint and proceedings arising out of it, unless the same are proved in accordance with law of evidence.

Resultantly, no case is made out for exercise of inherent powers under Section 482 Cr.P.C.

Dismissed.

(MANOJ BAJAJ)
JUDGE

03.07.2023

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No